IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4146 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARIKISHANDAS PRITAMDAS SHARMA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4146 of 2004

MR DAKSHESH MEHTA for Petitioner No. 1

Mr. KD Pandya, AGP for Respondent No. 1-2

..... for Respondent No. 3,4

NOTICE SERVED BY DS for Respondent No. 3/1-3/2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 02/08/2004

ORAL JUDGEMENT

Rule. Shri KD Pandya, learned AGP waives service of Rule on behalf of respondents No. 1 and 2. Though served nobody appears on behalf of respondents No. 3 and 4. With the consent of parties, the matter is taken up

for final hearing today.

2. In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of order passed by the revisional authority, i.e. Secretary (Appeals), Revenue Department, State of Gujarat, dated 9.3.2004 in Revision Application No. 4/2000 in dismissing the same and confirming the order passed by the Additional Collector, Vadodara dated 17.5.1999 in cancelling Entry No. 1293 in respect to the land bearing Block No. 39 situate at Village Dethan, Taluka-Karjan, District-Vadodara.

3. One Mahasukhlal Chhaganlal was owner of land bearing Block No. 39 admeasuring 3 hectares and 75 gunthas of land situate at Village Dethan, Taluka-Karjan, District-Vadodara. The petitioner purchased the said land by registered sale deed in the year 1998 and necessary entry to that effect was also effected in the record of rights vide Entry No. 1293. The Mamlatdar, Karjan set aside the said entry by order dated 28th January 1998. Being aggrieved and dissatisfied with the order passed by the Mamlatdar, Karjan, the petitioner preferred appeal before the Deputy Collector, Vadodara which was numbered as RTS Appeal No. 29 of 1998. The Assistant Collector,Vadodara by his judgment and order dated 17.5.1999 not only dismissed the appeal but in an RTS proceeding while confirming the order passed by the Mamlatdar directed to take Entry No. 725 into suo motu review and to initiate the proceedings for breach of Section 63 of the Bombay Tenancy & Agricultural Lands Act, 1948 [hereinafter referred to as 'the ACt'].

3.1. Being aggrieved and dissatisfied with the judgment and order passed by the Assistant Collector, Vadodara dated 17.5.1999, the petitioner preferred revision application before the Collector, Vadodara which was numbered as RTS Revision Application No. 117/1999. The Collector, Vadodara by his judgment and order dated 4.12.1999 dismissed the said application confirming the order passed by both the authorities below.

4. Being aggrieved and dissatisfied with the judgment and order passed by the Collector, VAdodara dated 4.12.1999 in dismissing the revision application and confirming the order passed by both the authorities below in cancelling the Entry No. 1293, the petitioner preferred revision application before the Secretary (Appeals), Revenue Department, State of Gujarat by his judgemnt and order dated 9.3.2004 dismissed the said revision application confirming the order passed by all

the authorities below by which Entry No. 1293 with regard to land in question and came to be cancelled. Being aggrieved and dissatisfied with the judgment and order passed by the Secretary (Appeals), Revenue Department, State of Gujarat, dated 9.3.2004 in Revision Application No. 4 of 2000, the petitioner has preferred the present Special Civil Application under Articles 226/227.

5. Shri Dakshesh Mehta, learned advocate appearing on behalf of the petitioner has submitted that the judgment and order passed by all the authorities below in cancelling the Entry No. 1293 with respect to the land in question on the ground that by the transaction there would be a breach of Section 63 of the Act and the petitioner was not an agriculturist could not have purchased the land in question are absolutely illegal and without jurisdiction and authority in law. He has further submitted that the revenue authorities while dealing with the RTS proceedings and had no jurisdiction and/or authority to decide the validity of the transaction and to decide whether there will be a breach of provisions of any other law or not. He has further submitted that the petitioner has purchased the land in question by registered sale deed and the revenue authorities were required to give effect to the registered sale deed in the revenue record. He has further submitted that the revenue authority exercising power in RTS proceeding had no jurisdiction to decide the legality and validity of the transaction. He has further submitted that number of submissions were made by the revisional authority with regard to jurisdiction and authority of the revenue authorities while exercising power in RTS proceedings but the same have not been considered. He has further submitted that even the Deputy Collector has gone to the extent of taking the Entry No. 725 in suo motu revision while dealing with the dispute with regard to Entry No. 1293 and the authority has no jurisdiction to pass an order to initiate the proceedings under the law, more particularly in the present case, in breach of Section 63 of the Act. In support of his aforesaid arguments, he has relied upon the judgment of the Supreme Court in Evergreen Apartment Cooperative Housing Society Vs. Special Secretary, Revenue Department, Gujarat State, reported in 1991(1) GLR Page 113, and in the case of L.Rs. of Popat Khima Ramani and Ors. Vs. Collector, Rajkot and Others, reported in 2003 (1) G.L.H. 30. Relying upon the aforesaid judgments, he has submitted that in the proceedings under Rule 108 of the Bombay Land Revenue Rules, the revenue authorities cannot independently pass

orders of cancelling the entries on an assumption that transactions recorded in the entry are against the provisions of a particular enactment. The question whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by following the procedure prescribed therein and by giving an opportunity of hearing to the concerned authorities likely to be affected by any order that may be passed.

6. On the other hand, Shri KD Pandya, learned AGP appearing on behalf of the State Government has submitted that as it was found that the transaction in question was itself in breach of the provisions of Section 63 of the Act. The Entry No. 1293 was rightly set aside and the authorities were justified in directing to initiate proceedings for any breach of Section 63 of the Act and therefore requested to dismiss the present Special Civil Application.

7. Heard the learned advocate appearing for the parties. The petitioner had purchased the land in question by registered sale deed. Entry to that effect was effected in the record of rights vide Entry No. 1293. The revenue authorities are required to give effect to the registered sale deed and mutate the names in the record of rights on the basis of the registered sale deeds. Revenue entries are made only for the purpose of recovering the revenue and for fiscal purpose. They do not confer any right, title or interest in favour of any of the parties. Even otherwise as held by this Court in the aforesaid two judgments, the revenue authorities exercising the power under Rule 108 had no jurisdiction and authority to decide the legality and validity of the transaction. As held by this Court in aforesaid two judgments in the proceedings under Rule 108 of the Bombay Land Revenue Rules, the revenue authorities cannot independently pass orders of cancelling the entries on assumption that the transactions recorded in the entry are against the provisions of a particular enactment. As held by this Court, the question whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by following the procedure prescribed therein and by giving an opportunity of hearing to the concerned authorities likely to be affected by any order that may be passed. In the present case, the transaction in question is not set aside by any of the authority under the provisions of the Act proceedings under Section 84-C were not initiated. Therefore while exercising the power under Rule 108 of the Rules, the authorities were not justified

in cancelling the entry No. 1293 on an assumption that the transaction recorded in the Entry is hit by Section 63 of the Act . Considering the same, the judgment and order dated 9.3.2004 passed by the learned Revenue Secretary (Appeals), State of Gujarat, Ahmedabad in Revision Application No. 4 of 2000 is required to be quashed and set aside and accordingly the same is quashed and set aside. The Entry No. 1293 with respect to the land in question is directed to be restored. However, it is clarified that this Court has not gone into the legality and validity of the transaction entered into between the parties on the basis of which Entry No. 1293 is effected. It will be open for the appropriate authority to initiate the proceedings for breach of Section 63 of the Act, i.e. proceedings under Sectino 84-C of the Act, if permissible under the law. The petition is accordingly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

rmr. [M.R. Shah, J.]